Nos. 82-1630 and 82-6695

In The

Supreme Court of the United States

October Term, 1983

TED S. HUDSON,

Petitioner,

v.

RUSSELL THOMAS PALMER, JR.,

Respondent.

and

RUSSELL T. PALMER, JR.,

Petitioner,

v.

TED S. HUDSON

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

GERALD L. BALILES
Attorney General of Virginia
WILLIAM G. BROADDUS*
Chief Deputy Attorney General
DONALD C. J. GEHRING
Deputy Attorney General
PETER H. RUDY
Assistant Attorney General
Supreme Court Building
101 North 8th Street
Richmond, Virginia 23219
(804) 786-2071
Counsel for Petitioner and Cross Respondent
**Counsel of Record*

DEBORAH C. WYATT
WYATT, ROSENFELD & GREEN
917 East Jefferson Street
Charlottesville, Virginia 22901
(804) 296-4138
Counsel for Respondents and Cross Petitioner

PETITION FOR CERTIORARI FILED IN NO. 82-1630 APRIL 5, 1983
PETITION FOR CERTIORARI FILED IN NO. 82-6695 MAY 4, 1983
CERTIORARI GRANTED JUNE 27, 1983

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APPENDIX

OPINIONS AND ORDERS OF COURTS BELOW

The Opinion and Order of the District Court entered on November 17, 1981 are not reported but are reproduced herein as well as in the Appendix to the Petition for a Writ of Certiorari. The Opinion of the United States Court of Appeals for the Fourth Circuit, issued January 6, 1983, is reported at *Palmer* v. *Hudson*, 697 F.2d 1220 (4th Cir. 1983), and a copy is contained herein and in the Appendix to the Certiorari Petition.

DOCKET ENTRIES IN THE UNITED STATES DISTRICT COURT

September 28, 1981—Entered Order allowing petitioner to file in forma pauperis and directing respondent to answer within 20 days. CIV. O. B. #73, p. 95. Copies as directed.

September 28, 1981—Petition filed.

October 19, 1981—Motion for Summary Judgment & Affidavits.

October 19, 1981—Clerk's Notice.

November 12, 1981—Petitioner's Motion Against Summary Judgment and request for Relief.

November 18, 1981—Memorandum Opinion

November 18, 1981—Order entered that defendant's motion for summary judgment is granted and this case is stricken from the docket. CIV. O. B. #74, p. 72. Copies to counsel & petitioner.

January 23, 1981—Notice of Appeal.

February 1, 1981—Mailed Record to Fourth Circuit of Appeals.

DOCKET ENTRIES IN THE FOURTH CIRCUIT COURT OF APPEALS

December 4, 1981—Case docketed ROA filed 12/04/81.

December 4, 1981—INFORMAL BRIEFING Letter mailed.

December 4, 1981—CASE SUBMITTED TO SLCO.

December 14, 1981—Appellant's informal brief filed.

December 28, 1981—CF and DS sent to Clerk's Office for abeyance order.

December 29, 1981—ORDER Holding case in abeyance pending this court's decision in *Bradley* v. *Kidd,* No. 80-6618, filed. Copy to Palmer and Katz.

January 29, 1982—Record, copy of brief, suggested per curiam and copy of district court order transmitted to Judges Phillips, Ervin and Murnaghan.

April 5, 1982—Record, d/s, and c/f submitted to Clerk's Office to be set down for argument per Judge Phillips.

April 6, 1982—ORDER assigning counsel for A, filed.

April 13, 1982—BRIEFING ORDER, filed. A due 05/24/82.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA,
continued and held at Abingdon, in and for said district,
on the 28th day of September, 1981.

RUSSELL THOMAS PALMER, JR.

v.

TED S. HUDSON, Officer, Bland Correctional Center

Civil Action No.: 81-0290-A

Upon consideration of plaintiff's application to proceed *in forma pauperis*, his proof of poverty and the complaint annexed, it is ORDERED that:

1. The complaint be filed *in forma pauperis*;

2. The defendants file their responsive pleading within 20 days of the receipt of this order;

3. The plaintiff is referred to Rule 5 of the Federal Rules of Civil Procedure which requires that every pleading after the complaint and every written motion, notice, and similar paper be served on all parties, which service shall be made by mailing it to the parties' attorney;

4. The plaintiff is hereby granted 15 days from receipt of a copy of the defendants' answer and other responsive pleadings within which to file opposing affidavits or other appropriate material, if he be so advised. Failure to so respond may result in the entry of judgment against plaintiff on the basis of defendants' responsive pleading.

5. Defendants are requested to notify the Court immediately upon the transfer or release of plaintiff, and to provide his new address, if known.

Service shall be made upon Deputy Attorney General, Criminal Division, 900 Fidelity Bldg., 830 E. Main St., Richmond, VA 23219 by mailing a copy of the order with

the complaint attached. A copy of this order shall also be sent to the plaintiff and to the Director, Bureau of Records, Virginia State Penitentiary, Richmond, VA 23219.

/s/ JAMES C. TURK
United States District Judge

App. 6

FORM TO BE USED BY PRISONERS IN FILING A COMPLAINT UNDER CIVIL RIGHTS ACT 42 U.S.C. S 1983

Name: RUSSELL THOMAS PALMER, JR.
Prisoner Number: 101040
Place of Confinement: Bland Correctional Center

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

COMPLAINT

RUSSELL THOMAS PALMER, Jr.

Plaintiff,

v.

TED S. HUDSON #2378,
Officer at Bland Correctional Center.

Defendant.

Case Number: 81-0290-A
(To be supplied by Clerk, U. S. District Court)

A. Have you begun other actions in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment? YES: ☒ NO: ☐

B. If your answer to "A" is yes, describe the action in the spaces below: If more than one action, describe the additional actions on reverse side of page.

1. Parties to the action: Palmer vs. State Corr. Dept. of Va. et al
2. Court (if Federal court, name the district; if a state court, name the City or County: Roanoke Co. Circuit Court, Botetourt Co. Circuit Court, U.S. District Court-Western District of Va.
3. Docket Number: N/A.

4. Name of Judge to whom case was assigned: Judge Koozze, Judge Byrd, Judge Turk.
5. Disposition (for example: Is the case still pending? If not what was the ruling? If so, what was the disposition?:) Pending

Did you present the facts relating to your complaint in the state prison grievance procedure? YES: ☐ NO: ☒

1. If your answer is no, what was the result? It would serve no purpose, only slow the wheels of justice.
2. If your answer is yes, explain: _____

D. STATEMENT OF CLAIM

State here briefly the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates and places. *DO NOT* give any legal arguments or cite any cases or statutes. If you intend to allege a number of different claims, number and set forth each claim in a separate paragraph. Use as much space as you need, attach extra pages if it is necessary.

CLAIM #1

Supporting *facts* (Tell your story briefly without citing cases of Law: On 9-16-81 around 5:50 p.m., officer Hudson shook down my locker and destroyed a lot of my property, i.e.: legal materials, letters, and other personal property only as a means of harassment. Officer Hudson has violated my Constitutional Rights. The shakedown was no routine shakedown. It was planned and carried out only as

harassment. Hudson stated the next time he would really mess my stuff up. I have plenty witnesses to these facts.

State what relief you seek from the Court. Make no legal arguments; cite no cases or statutes:

CLAIM #2

On 9-17-81 around 10 p.m., Officer Hudson again harassed me trying to force me into saying something smart to him or going off on him. I refused to do so. Therefore Officer Hudson had some type of false charge placed against me stating he found a pillow case cover in a trash bag which he believes is mine.

Relief: I request Officer Hudson to be removed as a correctional officer at Bland Farm because he is incompetent and his job has gone to his head.

Signed this 17th day of Sept., 1981.

/s/ RUSSELL T. PALMER, JR.
Plaintiff or Plaintiffs

CERTIFICATION

STATE OF VIRGINIA
CITY/COUNTY OF: BLAND

Russell T. Palmer, Jr., being first duly sworn, under oath, says: That he is the plaintiff in this action and knows the content of the above complaint; That it is true of his own knowledge, except as to those matters that are stated in it on his information and belief, and as to those matters he believes them to be true.

/s/ RUSSELL T. PALMER, JR.
Signature of Affiant-Plaintiff

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: September 17, 1981.

/s/ RUSSELL T. PALMER, JR.
Signature

FORMA PAUPERIS AFFIDAVIT

I hereby apply for leave to proceed with this complaint without prepayment of fees or costs, or giving security therefore, in support of my application, I state under oath that the following facts are true:

(1) I am the plaintiff in said complaint, and I believe that I am entitled to redress.

(2) I am unable to prepay the costs of said action, or give security therefore, because: I am an inmate at Bland Correctional Center.

(Write "None" above if you have nothing; otherwise list your assets.)

/s/ RUSSELL T. PALMER, JR.
Signature of Plaintiff
(Sign here *only* if you seek to proceed without prepayment of fees and costs)

STATE OF VIRGINIA
CITY/COUNTY OF: BLAND

Russell T. Palmer, Jr., being first duly sworn under oath, presents that he has read and subscribed to the above and states that the information therein is true and is correct.

/s/ RUSSELL T. PALMER, JR.
Signature of Plaintiff
(Required as to each plaintiff)

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on: September 17, 1981.

/s/ RUSSELL T. PALMER, JR.
Signature

CERTIFICATE

I hereby certify that the plaintiff herein has the sum of $25 on account to his credit at the penal institution where he is confined. I further certify that the plaintiff likewise has the following securities to his credit according to the records of said penal institution: None

---

REFUSED TO SIGN
AUTHORIZED OFFICERS OF PENAL INSTITUTION
/s/ RUSSELL T. PALMER, JR.

Russell T. Palmer, Jr.
B.C.C. Rt. 2, #101040
Bland, Va. 24315

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

ABINGDON DIVISION

RUSSELL THOMAS PALMER, JR.,

Plaintiff,

v.

TED S. HUDSON, etc.,

Defendant.

Civil Action No. 81-0290-A

MOTION FOR SUMMARY JUDGMENT

Now comes the defendant, by counsel, pursuant to Rule 56, Federal Rules of Civil Procedure, and moves this Honorable Court for summary judgment herein as follows:

1. Defendant submits that plaintiff alleges, in substance, that he has been harassed and certain of his personal property destroyed by the defendant.

2. Defendant submits as Exhibit I, his affidavit, with an Enclosure, and respectfully requests the Court to accept the same as evidence in support of this motion.

3. Defendant submits that on September 16, 1981, defendant was conducting a routine shakedown searching for contraband. During the course of the search, defendant found plaintiff's trash can contained a plastic pillow cover which had been sliced open and the cotton contents removed. This pillow cover was confiscated and plaintiff was charged with destroying state property. (See Exhibit I, Enclosure A). An Adjustment Committee hearing was held on September 24, 1981, and plaintiff was found guilty of the charge. (See Exhibit I).

4. Defendant denies that the shakedown was planned or carried out as a form of harassment and, further, denies that any of plaintiff's possessions were destroyed in the process of the search. (See Exhibit I).

5. Defendant submits that some deprivations of property are concomitants of prison life. *Pritchard* v. *Perry*, 508 F.2d 423 (4th Cir. 1975). Additionally, it is submitted that the confiscation of contraband does not impose upon the plaintiff any deprivation which goes beyond the reasonable limits of prison administration. *Pritchard* v. *Perry*, *supra*. Defendant submits, additionally, that subjecting the plaintiff to periodic shakedown searches does not violate any of his constitutional rights where the purpose of such a shakedown is to find contraband such as in the instant case. *Jones* v. *North Carolina Prisoners' Union*, 433 U.S. 119 (1977).

6. Defendant notes that the plaintiff fails to allege any previous altercations between plaintiff and defendant so as to give some factual basis to his allegation of harassment by the defendant in conducting a shakedown of his cell. Defendant submits, consequently, that plaintiff's allegation must fall of its own weight.

7. Defendant denies each and every allegation not expressly admitted herein.

8. Defendant requests to be allowed to file his answer upon any adverse determination by the Court upon this motion.

WHEREFORE, for the reasons stated above, defendant requests he be granted summary judgment herein.

Respectfully submitted,
TED S. HUDSON, etc.
By _____
Counsel

Alan Katz
Assistant Attorney General
Post Office Box 26963
Richmond, Virginia 23261

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of October, 1981, a true copy of the foregoing Motion for Summary Judgment was mailed to Russell Thomas Palmer, Jr., Bland Correctional Center, Route 2, Bland, Virginia 24315.

ALAN KATZ
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

ABINGDON DIVISION

RUSSELL THOMAS PALMER, JR.,

Plaintiff,

v.

TED S. HUDSON, etc.

Defendant.

Civil Action No. 81-0290-A

AFFIDAVIT

State of Virginia, County of Bland, to-wit:

T. S. HUDSON, first being duly sworn, states as follows:

1. I am a Correctional Officer at Bland Correctional Center.

2. I base the information contained in this affidavit on personal knowledge and records kept in the regular and ordinary course of business.

3. On September 16, 1981, Officer T. R. Lephew and I were conducting a routine shakedown of inmate Russell Palmer's (#101040) locker. The shakedown was not planned or carried out for harassment purposes; it was merely a routine search for contraband. Both Officer Lephew and I were careful with Palmer's possessions and I emphatically deny that any of his possessions were destroyed or torn. In fact, I remember stating in Palmer's presence to Officer Lephew that we should be careful with Palmer's possessions and try not to make a mess while we were searching his locker. During the search, I found Palmer's trash can contained a plastic pillow cover which had

been sliced open and the cotton contents had been removed. I then found the cotton contents stuffed in Palmer's pillow case on his bed. The plastic pillow cover was confiscated and since it was State property, I placed a Category B, Number 11, major institutional charge for "Destroying, altering, or damaging State property." A copy of this charge is stated on the Adjustment Committee Report Form, a copy of which is attached hereto as Enclosure A.

As noted on the Adjustment Committee report, Palmer was advised of his rights regarding the charge and a copy of the charge was served on Palmer the following day, September 17, 1981. Thereafter, when the Adjustment Committee convened on September 24, 1981, Palmer was found guilty of the charge based on my testimony as the reporting officer. As noted on page two of the report, the committee recommended a penalty of a reprimand be reduced to writing and placed in Palmer's record, and additionally, that Palmer make restitution for the destroyed cover.

4. I never told inmate Palmer that I would really mess up his locker in the future. I have never made up or placed false charges against him, nor have I acted in a manner which I would consider as harassment towards him.

T. S. HUDSON
/s/ T. S. HUDSON
Affiant

Sworn and subscribed to before me, a Notary Public, in and for the State of Virginia, County of Bland, on this 9th day of October, 1981.

/s/ SANDRA S. WILEY
Notary Public

My Commission Expires
February 5, 1985

DIVISION OF ADULT SERVICES,
DEPARTMENT OF CORRECTIONS
ADJUSTMENT COMMITTEE REPORT FORM

Name: Russell Palmer. Number: 101040. Institution: Bland Corr. Center. Quarters: 2-4.
Offense: Destroying, altering or damaging State property.
Title: _____ Date: September 16, 1981.
Category: B. Number: 11. Location: 2-4. Time: 5:50 p.m.

I, Officer T. S. Hudson, was working dorm 2-4 on the above date and time when Officer Lephew and I were conducting a routine shakedown of Inmate Palmer's, #101040, locker and possessions. I found in Palmer's trash can a plastic pillow cover which had been sliced open and the cotton contents removed. Upon further checking Palmer's pillow that he was using had the contents that belonged inside the pillow cover. The cover was confiscated and held as evidence. No further action taken at this time.

Witness: T. R. Lephew
Reporting Officer's signature: T. S. Hudson
Reporting Officer: T. S. Hudson
Pre-hearing detention: YES / NO If Yes, explain how inmate presents danger to persons or property: _____

Date released: _____

Advisement of Rights:

You are hereby informed that your signature below is not an admission of guilt. By signing below, the inmate indicates his/her preference regarding the rights indicated.

1. Attorney requested, Yes By phone DEK
If yes, attorney's name and date contacted: _____
Palmer stated he did not figure he needed an attorney.
2. Inmate or staff advisor requested, No DEK
If yes, staff members name or inmate's name and number:

---

3. Voluntary witnesses requested, Yes DEK
If yes, list names and numbers: Will give names later.
4. Date set for hearing: September 24, 1981.
5. The reporting officer will be present at the hearing.

I have been informed of the charges against me and advised of my rights at the Adjustment Committee hearing.
Witness: E. E. White. Inmate's Signature: R. Palmer.
Witness: D. E. Keyley. Inmate Provided copy of report — Date: September 17, 1981. Time: 10:00 p.m.

Officer in charge, signature: J. D. Gusler.
Officer in charge: J. D. Gusler, Captain.
Palmer, Russell #101040
Continuance yes/no
Date of Continuance _____
Reason for continuance/Miscellaneous Remarks _____

Revised Hearing Date _____

Adjustment Committee Hearing

Tape No. 934, Time 3:04 P.M., Date 9-24-81.
Plea ___ Guilty/Not Guilty: Deny.
Inmate Signature: Russell T. Palmer, Jr.
Decision of Committee: Guilty.
Reason for Decision: Decision based on report by officer Hudson that a destroyed pillow cover was found in a trash bag in Palmer's area of responsibility. Upon checking Palm-

er's pillow, on his bed was a pillow case only. Inside the pillow case was the part taken from a pillow cover. There was no other pillow on Palmer's bed. Palmer presented a pillow and cover, stated they were his and he had destroyed nothing.

Penalty: Recommend, Reprimand, reduced to writing and entered in inmates record. Also Palmer is to make restitution for the destroyed cover.

Suspension Recommendations: Yes/No _____

Chairman, Signature H. E. Thompson.

Member: Peggy H. Sutphin.

Member: N. A. McPeak.

This is to certify that I have received a copy of this report and have been informed of my right to request that the Director, Division of Adult Services, review this decision.

Inmate Signature: Russell T. Palmer, Jr.

Admitted to Isolation _____

Date IN _____ Weight In _____

Date OUT _____ Weight Out _____

Assistant Warden Action _____ Approved (☒)/

Disapproved _____ L. K. Hardy

Comments _____

Date September 25, 1981

Associate Director BCFU/Major Institutions:

Approved/Disapproved _____

Comments _____

Date _____

Received by Division of Adult Services _____

Approved/Disapproved _____

Comments _____

Date _____

DAS-10A

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF VIRGINIA

JOYCE F. WITT, Clerk

RUSSELL THOMAS PALMER, JR.

v.

TED S. HUDSON, Officer

Civil Action No. 81-0290-A

This case is before the court pursuant to defendant's motion for summary judgment which is supported by affidavits and copies of plaintiff's records. Before ruling on this motion the Court will give plaintiff 15 days from the date of this Notice to submit counter-affidavits or other relevant evidence contradicting, explaining or avoiding defendant's evidence. Failure of plaintiff to so respond may, if appropriate, result in summary judgment being granted for defendant.

Issued and mailed this 19th day of October, 1981.

JOYCE F. WITT, *Clerk*
U. S. District Court
By: D. SLEMP
Deputy Clerk

App. 20

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

ABINGDON DIVISION

RUSSELL T. PALMER, JR.,

Plaintiff,

v.

TED S. HUDSON,

Defendant.

Civil Action No.: 81-0290-A

MOTION AGAINST SUMMARY JUDGMENT AND REQUEST FOR RELIEF

Comes Now Plaintiff Russell T. Palmer, Jr. #101040 in response to defendant's, by counsel, motion for summary judgment dated Oct. 16, 1981, and the affidavit of Ted S. Hudson dated Oct. 9, 1981.

1. All of Plaintiff's allegations are true to the best of his knowledge.

2. Plaintiff submits affidavits as Exhibits I and II with enclosures and respectfully requests this Honorable Court to accept the same as evidence in support of this motion.

3. Plaintiff knows and believes that the shakedown of Sept. 16, 1981 was not a routine shakedown, but only a form of harassment by officer Ted S. Hudson. Plaintiff does not nor has ever had a trash can, personal trash cans are not allowed in dorm 2-4 where plaintiff lives. Plaintiff has in his possession now the pillow with its green plastic cover he was issued upon his arrival at Bland Correctional Center on Aug. 11, 1981. The pillow cover confiscated, which was found in a dorm trash bag is not plaintiff's, since

plaintiff still has his original pillow which he presented at institutional adjustment hearing on Sept. 24, 1981, but committee did not accept or pay any attention to plaintiff's proof of his innocence, but sided with their fellow officer and found plaintiff guilty knowing he was/is *not guilty* of the charge.

4. Plaintiff again states the shakedown was only a form of harassment by Ted S. Hudson. Plaintiff Palmer also again states some of his personal property was intentionally destroyed by Ted S. Hudson.

5. Plaintiff states that *no* deprivations of legal work and legal materials should be concomitants of prison life. *No contraband* belonging to plaintiff Palmer was confiscated by Ted S. Hudson on Sept. 16, 1981. This is not a case concerning contraband. Defendant's counsel is trying to Gerrymander the facts. Plaintiff realizes that routine shakedowns are necessary to properly run a prison, but he also knows they should not be used as harassment and retaliation.

6. Plaintiff has had several "run-ins" with Ted S. Hudson, the lone named defendant in this case. Plaintiff did state Ted S. Hudson had shook him down many times as harassment. Defendant Hudson has also had plaintiff Palmer called over to the office late at night only as harassment and an attempt to "get" him. Plaintiff does not live in a cell, as defendant's motion seems to state. Plaintiff lives in a dorm.

7. The affidavit of Ted S. Hudson is not correct. He has made false statements, but this is not unusual for him. Ted S. Hudson has wrote lots of false charges against inmates here at Bland, in his attempt to show everyone he is "bad." Ted S. Hudson went beyond his line of duty as a correctional officer, therefore he should *not* be represented by the

Virginia Assistant Attorney General. Plaintiff is attacking Ted S. Hudson, not the Virginia Dept. of Corrections.

8. Plaintiff states all his allegations are true to the best of his knowledge and belief. Plaintiff also states that defendant is only trying to stop justice from being done in this case.

9. Plaintiff requests that defendants *not* be allowed to slow the process of justice by being allowed to file any more motions.

Wherefore, for the reasons stated and the reasons in original complaint, plaintiff requests this Honorable Court rule in his favor and:

(A) order officer Hudson removed from his duty as a correctional officer.

(B) order the Virginia Dept. of Corrections to better train their prison guards and staff.

(C) grant any additional relief and monetary damages this Court deems fit.

Dated: Oct. 19, 1981.

Respectfully submitted,
RUSSELL T. PALMER, JR.
Russell T. Palmer, Jr.
B.C.C. Rt. 2, #101040
Bland, Va. 24315-9616

I hereby certify a copy of this Motion Against Summary Judgment and request for Relief was sent to Mr. Alan Katz, Asst. Attorney General, Richmond, Va. on this date, October 19, 1981.

RUSSELL T. PALMER, JR.

EXHIBIT #1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

ABINGDON DIVISION

RUSSELL T. PALMER, JR.,

Plaintiff,

v.

TED S. HUDSON,

Defendant.

Civil Action No. 81-0290-A

AFFIDAVIT

State of Virginia, County of Bland,

Richard A. Daughtrey, first being duly sworn, states the following:

On September 16, 1981 around 5:50 p.m. I Richard Daughtrey did witness a shakedown and ransacking of property belonging to inmate Russell T. Palmer, Jr. in the hope of finding contraband. During this time, in fact, at the conclusion of the search a plastic pillow cover was discovered in a brown paper trash bag located between bunks eleven and twelve. Officer Hudson assumed it to be the property of inmate Palmer.

The assumption was incorrect and Mr. Palmer categorically denied it to be his. The aforementioned trash bag is used by any and all prisoners during television viewing; therefore, it is obvious that the pillow covering in question could have belonged to anyone and that the charge brought

against inmate Palmer for destruction of state property is a form of harassment rather than fact.

Dated: October 19, 1981

RICHARD A. DAUGHTREY
#124950

Bland Correctional Center
Rt. 2
Bland, Va. 24315-9616
Bldg. 2/4

EXHIBIT #2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

ABINGDON DIVISION

RUSSELL T. PALMER, JR.,

Plaintiff,

v.

TED S. HUDSON,

Defendant.

Civil Action No. 81-0290-A

AFFIDAVIT

State of Virginia, County of Bland,

Paul T. Hussey, comes forth and states as follows:

that on Sept. 16, 1981 approximately 6 p.m. I, Paul T. Hussey was present and did observe the shakedown of property belonging to one Russell T. Palmer by Officer Ted S. Hudson and another guard. No contraband was found in what I can only describe as a ransacking rather than a proper search. Inmate Palmer was written up (destruction of state property) when a pillow case was discovered in a trash bag situated between bunks eleven and twelve. Since inmate Palmer's bed is located only 6' 9" from the t.v. set, it is common practice for several other inmates to use his area for seating. Furthermore, many inmates use that trash bag, since the only designated trash and litter recepticle is located at the opposite end of the *dormitory*. Moreover, I wish to point out that Mr. Hudson was merely knit-picking, since rarely do officers go to this extent. As I sit here now

typing this statement I bear witness to the fact that inmate Palmer does in fact have a pillow with pillowcase intact;

that upon the conclusion of the search, inmate Palmer voiced his objection to the mess that remained. I have, myself, been the recipient of a shakedown and felt no displeasure since the officer (Saunders) was both professional and considerate in performing his task. At any rate, as Officer Hudson passed by me he muttered something to the effect that next time he'd really make a mess.

This is my first arrest so naturally my only time in prison. And I hope that no reprisal or revenge will be sought against me for bringing these facts to the attention of this Honorable Court.

Dated: October 19, 1981

PAUL T. HUSSEY pro/se
Bland Corr. Center
Rt. 2
Bland, Va. 24315-9616
#124907

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA

ABINGDON DIVISION

Civil Action No. 81-0290-A

RUSSELL T. PALMER, JR.,

Plaintiff,

---

v.

TED S. HUDSON,

Defendant.

ORDER

In accordance with the Memorandum Opinion entered this day, it is ADJUDGED and ORDERED that defendant motion for summary judgment be, and hereby is, granted and that this case be stricken from the docket of the court.

The Clerk of Court is directed to send certified copies of this Order to plaintiff and counsel of record for the defendant.

ENTER: This 17th day of November, 1981.

/s/ TED DALTON
U.S. District Judge

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA

ABINGDON DIVISION

Civil Action No. 81-0290-A

RUSSELL T. PALMER, JR.,

Plaintiff,

---

v.

TED S. HUDSON,

Defendant.

BY: Ted Dalton
U.S. District Judge

MEMORANDUM OPINION

Russell T. Palmer, Jr., an inmate of the Bland Correctional Center, brings this action *pro se* under 42 U.S.C. § 1983 alleging that the defendant, Ted S. Hudson, an officer at Bland, has deprived him of his constitutional rights. He alleges that Hudson:

1) Destroyed certain of his non-contraband, personal property;

2) Brought a false charge against him before the prison disciplinary committee; and

3) Has engaged in a pattern of harassment against him, as evidenced by the first two allegations.

Defendant Hudson denies these allegations and has filed a motion for summary judgment accompanied by his affidavit. Advised of his right to respond, plaintiff has filed a further pleading, reiterating his claims, and affidavits from two of his fellow inmates supporting his version of the facts. As the factual allegations are now fully developed, the court finds it timely to adjudge the merits of defendant's motion for summary judgment. Although this case is replete with factual disputes, none is crucial to the application of the relevant law. Accordingly, as plaintiff has failed as a matter of law to state a claim cognizable under § 1983, the defendant's motion for summary judgment will be granted.

The essential facts underlying this dispute are as follows: On September 16, 1981, defendant Hudson conducted a shakedown of plaintiff's locker, in the course of which plaintiff claims that Hudson, apart from leaving his locker in disarray, destroyed certain personal, non-contraband property. During the shakedown, Hudson discovered in a trash can near plaintiff's bunk a pillow case that had been ripped open and the cotton contents removed. Hudson then placed a charge against plaintiff of "destroying, altering or damaging State property". A hearing was held on this charge on September 24, 1981 and plaintiff was found guilty. A written reprimand was entered in his inmate record and he was ordered to make restitution for the cost of the pillowcase.

Plaintiff claims that Hudson's action in destroying his personal property has deprived him of property without due process of law in contravention of his fourteenth amendment rights. This issue has been recently addressed by the Supreme Court in *Parratt* v. *Taylor*, ... U.S. ...., 101 S.Ct. 1908 (1981). Under the holding in that case, this

court is forced to conclude that plaintiff has failed to state a claim of deprivation of property without due process of law such as would be cognizable in an action under § 1983. In *Parratt* a prisoner alleged that a prison official had negligently lost a certain item of his property. He sued under § 1983 for the value of the property, alleging that he had been deprived of property without due process of law. Initially, the Supreme Court noted that in any action under § 1983 two elements are essential: 1) action by a person acting under color of state law resulting in 2) a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States. In *Parratt,* as in this case, the right claimed was the fourteenth amendment right not to be deprived of property "without due process of law". The Court held, however, that where the state provides the plaintiff with a remedy to redress his loss that satisfies the requirements of due process, then the plaintiff cannot be said to have been deprived of his property "without due process of law".

> "We may reasonably conclude, therefore, that the existence of an adequate state remedy to redress property damage inflicted by state officers avoids the conclusion that there has been any constitutional deprivation of property without due process of law within the meaning of the Fourteenth Amendment."

Parratt v. *Taylor*, ... U.S. ...., ..., 101 S.Ct. 1908, 1916 (1981), *quoting from Bonner* v. *Coughlin*, 517 F.2d 1311, 1319 (7th Cir. 1975), *mod. en banc*, 545 F.2d 565 (1976), *cert. denied*, 435 U.S. 932 (1978). The Court in *Parratt* concluded that the existence of a state statutory tort remedy allowing inmates to recover against state officials for negligent loss of property satisfied the requirements

of due process. Similarly, the court in this case must conclude that the tort remedies available to the plaintiff in the Virginia courts, which plaintiff is advised to pursue to compensate for the loss he alleges has occurred, satisfies due process.

Plaintiff has alleged an intentional destruction of his property by defendant Hudson. Where the tort is intentional, the defendant employee of the state would enjoy no immunity under Virginia law. *Elder* v. *Holland*, 208 Va. 15, 155 S.E.2d 369 (1967). Accordingly, plaintiff may proceed against the defendant in state court either for conversion, *see generally* 19 *Michie's Jurisprudence*, "Trover and Conversion," § 4 (1977), or for detinue, *see* Va. Code §§ 8.01-144 *et seq.* (Repl. Vol. 1977). As these remedies provide plaintiff with a "meaningful opportunity subsequent to the initial taking for a determination of rights and liabilities," *Parratt, supra*, 101 S.Ct. at 1917, he has not alleged that he has been deprived of his property without due process of law. Therefore his allegation fails to state a claim cognizable under § 1983.

Plaintiff's second claim is that defendant Hudson brought a false charge against him before the prison's disciplinary committee. The affidavits of plaintiff's fellow inmates substantiate his claim that the prison disciplinary decision was wrong and that, at the very least, there was a substantial question whether the pillow cover found in the trash can near his bunk was in fact his. Nevertheless, it is now well-settled that federal courts do not sit as a further stage of appeal or a board of review to determine the accuracy of facts determined at a prison disciplinary hearing. *Flythe* v. *Davis*, 407 F. Supp. 137, 138 (W.D. Va. 1976). The role of this court is to determine, rather, that the prisoner was afforded the protections of procedural due process in his

adjustment committee hearing. *Russell* v. *Division of Corrections*, 392 F. Supp. 476, 477 (W.D. Va. 1975). In this case it appears that plaintiff was given full benefit of those procedures mandated by *Wolff* v. *McDonnell*, 418 U.S. 539 (1974). He was served with notice of the charges against him, was given an opportunity to seek advice from an attorney or an inmate or staff adviser, was present at the hearing and was afforded the opportunity of presenting witnesses and evidence on his behalf. These procedures, established pursuant to published guidelines of the Virginia Department of Corrections, fully comported with the requirements of *Wolff*. Indeed, plaintiff makes no allegation that they did not. He claims, however, that the hearing panel disregarded his clear proofs in favor of supporting a fellow officer's false charge. This claim, however, goes to the very merits of the charge which this court, in deference to the procedures established by the state, cannot review. Accordingly, this claim also fails to state a cause of action cognizable under § 1983.

Plaintiff's final claim is that he is being subjected to harassment on the part of defendant Hudson. He points to the two preceding allegations as supportive of this claim and also to numerous other shakedowns which he has experienced at the hands of Officer Hudson. Plaintiff also alleges that he was called into the office once late at night. While there is no doubt that in extreme cases of harassment and improper treatment a claim of cruel and unusual punishment proscribed by the sixth amendment may be stated, *see, e.g., Landman* v. *Royster*, 354 F. Supp. 1302 (E.D. Va. 1973), the court does not feel that the allegations made in this case, even if taken as true, rise to the level of a constitutional deprivation. It has long been recognized that courts "possess no expertise in the conduct and manage-

ment of correctional institutions". *Finney* v. *Arkansas Board of Corrections*, 505 F.2d 194, 200 (8th Cir. 1974).

> Courts are accordingly limited in their exercise of power in this area to deprivations which represent constitutional abuses and they cannot prohibit a given condition or treatment in prison management unless it reaches the level of an unconstitutional deprivation. It has been well said that "[C]ourts encounter numerous cases in which the acts or conditions under attack are clearly undesirable and are condemned by penologists, but the courts are powerless to act because the practices are not so abusive as to violate a constitutional right." Note, *Decency and Fairness: An Emerging Judicial Role in Prison Reform*, 72 *Va.L.Rev.* 841, 843 (1971).

Sweet v. *South Carolina Dep't of Corrections*, 529 F.2d 854, 859 (4th Cir. 1975). This court is willing to accept as true the plaintiff's allegations concerning "harassment" by defendant Hudson. As the court has already noted, however, Virginia state law provides plaintiff an adequate forum to pursue his claim that Hudson has intentionally destroyed his personal property. Concerning the "false charge" lodged against him by Hudson, the court is powerless to review the merits of this claim, as explained above. Finally, this court stands ready to correct any abuse of plaintiff that rises to the level of a deprivation of a constitutional right. But the allegations of "harassment" contained in this complaint simply do not, singly or in the aggregate, amount to a matter of constitutional significance. Accordingly, the court finds that plaintiff, in this regard also, has failed to state a claim under § 1983.

For the reasons set forth above, defendant's motion for

summary judgment is granted. An appropriate order will be entered.

ENTER: This 17 day of November, 1981.

/s/ TED DALTON

Ted Dalton
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

ABINGDON

RUSSELL T. PALMER, JR.,

Plaintiff,

v.

TED S. HUDSON,

Defendant.

Civil Action No.: 81-0290-A

NOTICE OF APPEAL

Comes Now plaintiff Russell T. Palmer, Jr. who hereby appeals to the United States Court of Appeals for the Fourth Circuit the order dated November 17, 1981 concerning the above case.

It is clear to see that plaintiff was found guilty of a false charge. Plaintiff cannot understand why the Dept. of Corr. is able to get away with their unlawfulness and wrongdoings.

Therefore, plaintiff files this appeal to seek justice.

Dated: Nov. 19th, 1981

Respectfully submitted,
RUSSELL T. PALMER, JR.
Russell T. Palmer, Jr.
B.C.C. Rt. 2, #101040
Bland, Va. 24315-9616

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 81-6967

RUSSELL THOMAS PALMER, JR.

Appellant,

v.

TED S. HUDSON, Officer,

Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Abingdon. Ted Dalton, Senior District Judge.

Argued October 5, 1982 Decided January 6, 1983

Before WINTER, Chief Judge, PHILLIPS and MURNAGHAN, Circuit Judges.

Deborah C. Wyatt (Wyatt & Rosenfield on brief) for Appellant; Alan Katz, Assistant Attorney General (Gerald L. Baliles, Attorney General of Virginia on brief) for the Appellee.

WINTER, Chief Judge.

Russell T. Palmer, Jr., an inmate of the Bland Correctional Center in Virginia, brought this § 1983 action against Ted S. Hudson, an officer of that facility, alleging, among other things, that Officer Hudson destroyed his property, in a non-routine shakedown search.[1] The district court granted defendant's motion for summary judgment, reasoning that under Parratt v. Taylor, 451 U.S. 527 (1981), the intentional destruction of a prisoner's property is not a violation of due process, when the prisoner has an adequate remedy under state law. The district court also ruled that, accepting Palmer's allegations of harassment as true, it could not conclude that the allegations were of constitutional significance. We agree that under *Parratt* due process is not violated when a state official intentionally deprives an individual of his property by a random and unauthorized act if the state provides an adequate postdeprivation remedy. However, we reverse and remand for further proceedings on Palmer's claim that the alleged nonroutine shakedown of his property by Officer Hudson was an unconstitutional search in violation of his Fourteenth Amendment right to privacy.

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[1] Palmer's other claims are without merit and may be disposed of summarily. The district judge properly reasoned that defendant's actions do not constitute cruel and unusual punishment and that the procedures accorded to Palmer in the disciplinary proceedings suffice under the standard of Wolff v. McDonnell, 418 U.S. 539 (1974). The claim that defendant destroyed legal materials during the search of his locker, and so infringed his right of access to the courts, is meritless since there is no indication that Officer Hudson's acts were in retaliation for Palmer's legal activities, *cf.* Russell v. Oliver, 552 F.2d 115 (4 Cir. 1977), nor any indication that other avenues for seeking legal relief were unavailable to Palmer. *Cf.* Williams v. Leake, 584 F.2d 1336 (4 Cir. 1978).

A.

In *Parratt* the Supreme Court held that the negligent loss of a prisoner's property by a prison official was not a due process violation when the state provided an adequate post-deprivation remedy. *Parratt's* scope cannot easily be limited to negligent deprivations of property. For, if the underlying principle is, as Justice Rehnquist stated in a plurality opinion, that when no practical way to provide a predeprivation hearing exists, a postdeprivation hearing will satisfy the dictates of procedural due process, then it as well applies to an intentional deprivation for which meaningful prior review was impractical. *Accord* Engblom v. Carey, 677 F.2d 957 (2 Cir. 1982); Rutledge v. Arizona Bd. of Regents, 660 F.2d 1345, 1352 (9 Cir. 1981), *cert. granted,* sub nom Rutledge v. Kush, 50 U.S.L.W. 3862 (1982).[2]

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[2] *See also* Gilday v. Boone, 657 F.2d 1, 2 n.1 (1 Cir. 1981); Waterstreet v. Central State Hospital, 533 F. Supp. 274 (W.D. Va. 1982); Sheppard v. Moore, 514 F.S. 1372 (M.D.N.C. 1981). Several courts have stated that *Parratt* should not extend to intentional acts. Weiss v. Lehman, 676 F.2d 1320, 23 (9 Cir. 1982); Yusuf Asad Madyun v. Thompson, 657 F.2d 868, 873 (7 Cir. 1981); Schiller v. Strangis, 540 F. Supp. 605 (D. Mass. 1982); Howse v. DeBarry Correctional Inst., 537 F. Supp. 1177 (M.D. Tenn. 1982); McCowen v. City of Evanston, 534 F. Supp. 243, 49 (N.D. Ill. 1982); Peters v. Township of Hopewell, 534 F. Supp. 1324 (D. N.J. 1982); Tarkowski v. Hoogasion, 532 F. Supp. 791, 794-95 (N.D. Ill. 1982); Parker v. Rockefeller, 521 F. Supp. 1013, 16 (N.D. W. Va. 1981).

A common argument for so limiting *Parratt* is that extending its scope to intentional acts drastically undercuts the use of § 1983 as a check on wrongdoing by state officials, its congressionally intended purpose. Howse v. Debarry Correction Inst., *supra;* Tarkowski v. Hoogasion, *supra;* Parker v. Rockefeller, *supra.* However, § 1983 is not a remedy for every wrong committed by state officials, it is only a remedy for those wrongs which are of a constitutional dimension or which violate a federal statute. *Parratt,* of course, did not restrict the availability of § 1983 as a remedy for constitutional wrongs. Instead, it held the constitutional requirement of procedural due process to be satisfied if the state provides a post facto remedy for

Nor do we read any of the separate opinions in *Parratt* to give any persuasive basis on which to conclude that its holding does not encompass an intentional tort. It is true that four justices stated that they would limit *Parratt's* scope to negligent acts, but no persuasive rationale was provided for doing so. Justice Blackmun, with whom Justice White concurred, agreed with the plurality that the impracticality of predeprivation review and the existence of a postdeprivation remedy was relevant to determining if an action violated due process. However, he suggested that the existence of a state tort remedy should not suffice to cure the unconstitutional nature of a state official's intentional act, since an intentional act would rarely be amenable to prior review and since a state tribunal would be unlikely to provide due process when reviewing the deliberate conduct of the state's employees. 451 U.S. at 545-546. Neither rationale for limiting *Parratt's* scope obtains here for there is no practical mechanism by which Virginia could prevent its guards from conducting personal vendettas against prisoners other than by punishing them after the fact, nor have we been given any cause to believe that Virginia courts would be less diligent in protecting prisoners from intentionally inflicted injuries than in protecting them from negligently inflicted injuries.

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an injury inflicted by an official which was not done pursuant to an established policy and was not amenable to prior control. *Parratt* does not impinge upon the right to a § 1983 remedy for an officially inflicted injury done pursuant to an established procedure, which remains a violation of the requirement of procedural due process, Logan v. Zimmerman Brush Co., 50 U.S.L.W. 4247, 4251 (Feb. 23, 1982), or for an official act which violates a substantive constitutional right, such as the right to vote, Duncan v. Poythress, 657 F.2d 691, 704-5 (5 Cir. 1981), or for an official act which is sufficiently egregious to amount to a violation of the requirement of substantive due process, Schiller v. Strangis, 540 F. Supp. 605, 613-15 (D. Mass. 1982).

Justice Marshall intimated that he would limit *Parratt's* scope to negligent deprivations, but he, too, suggested no rationale for the distinction that he was prepared to recognize. 451 U.S. at 555. Justice Powell would limit *Parratt* to nonintentional takings by making intent an essential element of a due process claim on the theory that "deprivation" as used in § 1983 "connotes an intentional act. . . or, at the very least, a deliberate decision not to act to prevent a loss." 451 U.S. at 547-548. However, every other member of the court agreed that a negligent deprivation of property was a due process violation, and that the proper inquiry was whether a postdeprivation remedy could cure the constitutional wrong. As we state above, once it is assumed that a postdeprivation remedy can cure an unintentional but negligent act causing injury, inflicted by a state agent which is unamenable to prior review, then that principle applies as well to random and unauthorized intentional acts.

We therefore conclude that plaintiff has no meritorious cause of action under § 1983 for the allegedly intentional destruction of his property.

B.

We conclude, however, that the district court's entering summary judgment for defendant with regard to an unreasonable search of his property was premature. In his verified complaint plaintiff alleged that "officer Hudson shook down my locker and destroyed. . . my property. . . as a means of harassment. . . . The shakedown was no routine shakedown. It was planned and carried out only as harassment." In moving for summary judgment, defendant filed his affidavit asserting that he and Officer Lephew conducted "a routine search of [plaintiff's] locker" and that "it was merely a routine search for contraband." Plaintiff responded with a

counteraffidavit reasserting that he "knows and believes that the shakedown of Sept. 16, 1981 was not a routine shakedown, but only a form of harassment by [defendant]."

Thus the record reflects a sharp factual conflict as to whether the search was routine or whether it was conducted solely for purposes of harassment. Summary judgment was therefore precluded, Rule 56 F.R. Civ. P., unless it can be concluded that Palmer had no privacy interest in the locker. While we have never considered this issue, numerous other courts have held that prisoners have a limited privacy interest and should be free from unreasonable searches and unjustifiable confiscations.[3] United States v. Hinckley, 672 F.2d 115, 129-32 (D.C. Cir. 1982); United States v. Lilly, 576 F.2d 1240, 1244-47 (5 Cir. 1978); United States v. Stumes, 549 F.2d 831, 32 (8 Cir. 1977); Sostre v. Preiser, 519 F.2d 763, 764-65 (2 Cir. 1975); Bonner v. Coughlin, 517 F.2d 1311, 1315-17 (7 Cir. 1975), *aff'd on rehearing*, 545 F.2d 565 (1976) (in banc), *cert. denied*, 435 U.S. 932 (1978). United States v. Savage, 482 F.2d 1371, 1372 (9 Cir. 1973); Daughtery v. Harris, 476 F.2d 292, 294 (10 Cir.), *cert. denied*, 414 U.S. 872 (1973). ***But see*** United

[3] In Lanza v. New York, 370 U.S. 138, 142-43 (1962), the Court intimated that Fourth Amendment protections would not extend to a prison cell. The continuing validity of this reasoning is doubtful, for in Katz v. United States, 389 U.S. 347 (1967), the Court rejected the "constitutionally protected area" test upon which the *Lanza* dicta was based. In United States v. Edwards, 415 U.S. 800, 808 n.9 (1974), the Court expressly left open the question whether prisoners possessed privacy rights. In Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974), it stated that, as a general rule, prisoners should be accorded those constitutional rights which are not inimical to prison administration or security. In Bell v. Wolfish, 441 U.S. 520, 555-60 (1979), the Court again expressly refused to address the question of whether prisoners possessed any privacy rights, merely holding that whatever rights they retained were limited, and not violated by cell block shakedowns, or body cavity searches conducted after prisoner contact with outsiders.

States v. Hitchcock, 467 F.2d 1107 (9 Cir. 1972), *cert. denied*, 410 U.S. 916 (1973).

In defining privacy rights in prison we are guided by the general principle that prisoners should be stripped of only those constitutional rights which would impair prison security or administration. *Cf.* Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974). However, this is not to say that prisoners have the same privacy interests as those not in prison. Because of the legitimate demands of prison security, and to a lesser extent a prisoner's diminished expectation of privacy,[4] neither a warrant nor probable cause is a prerequisite to a search or seizure in prison. *See, e.g.*, United States v. Lilly, 576 F.2d at 1244; United States v. Stumes, 549 F.2d at 832; Bonner v. Coughlin, 517 F.2d at 1317. Irregular, unannounced shakedown searches of prisoner property are permissible, for they are an effective means of ensuring that prisoners do not possess contraband. Bell v. Wolfish, 441 U.S. 520, 555-57 (1979); Olson v. Kleeker, 642 F.2d 1115 (8 Cir. 1981). Shakedown searches of single individuals are troubling, however, for there is an ever present danger that the search was motivated by a guard's personal desire to harass or humiliate the inmate, and not by legitimate institutional concerns. *See* Wayne R. LaFave, 3 Search & Seizure § 10.9 (1978). Needless to say, a primary purpose of the Fourth and Fourteenth Amendments is to protect individuals from such arbitrary and oppressive invasions of personal security. Delaware v. Prouse, 440 U.S. 648, 653-54 (1979).

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[4] Denying prisoner privacy rights merely because of the absence of an expectation of privacy is circular reasoning. Prisoners will come to expect that level of privacy which is accorded to them. Giannelli & Gilligan "Prison Searches and Seizures: 'Locking' The Fourth Amendment Out of Correctional Facilities", 62 Va. L. Rev. 1045, 1058-63 (1976).

But individual shakedown searches, such as that here, may legitimately be grounded upon either a prison policy of conducting random searches of single cells or blocks of cells to deter or discover the possession of contraband, or upon the existence of some reasonable basis for a belief that the prisoner possesses contraband. We recognize that allowing the prison authorities to adopt a program of random individual searches may provide an increased opportunity for prison officials to abuse that power and utilize searches as a means of harassment; however, the device is of such obvious utility in achieving the goal of prison security that we do not think that the risk outweighs the benefit.[8] Prisoners will be accorded some protection from abusive searches by requiring prison authorities, if the validity of the search is questioned, to prove that adequate grounds existed to justify the search. *Cf.* United States v. Lilly, 576 F.2d at 1245. When the search is a shakedown of a particular prisoner's property, this may be done in one of two ways: either by proving that the search was done pursuant to an established program of conducting random searches of single cells or groups of cells reasonably designed to deter or discover the possession of contraband, *cf.* United States v. Ready, 574 F.2d 1009, 1014 (10 Cir. 1978) (search permissible without specific cause when done pursuant to routine reasonably designed to promote institutional security); or, by proving that some reasonable basis existed for the belief that the prisoner possessed contraband. In assessing the validity of a proferred justification for a search, a court should, of

[8] Some justification for an absolute prohibition of individual shakedown searches can be found in Delaware v. Prouse, *supra*, where the Supreme Court invalidated a state program of conducting random spot checks of automobiles, in part because of the inherent danger of arbitrary conduct by the police, despite the admitted utility of such a practice.

course, consider dir[ect proof offered by the plaintiff that the search was imperm[issibly motivated, by a desire to harass or humiliate him, s[uch as evidence of other acts of harassment by the defenda[nt.

If the defendant i[s unable to establish that the search was permissibly motivat[ed and conducted in a reasonable manner, then the plaintif[f is entitled to at least nominal damages. In an appropriate c[ase where his injury is greater, he may be entitled to both a[ctual and punitive damages. *See* United States v. Calandra, [414 U.S. 338, 354 n.10 (1974); Baskin v. Parker, 588 F.2d [965 (5 Cir. 1979); O'Connor v. Keller, 510 F. Supp. 1359 (D. Md. 1981). Parratt v. Taylor does not trench upon the [right to a § 1983 remedy for an unreasonable search, for [the right violated is the substantive right to privacy and not [a right to procedural due process. *See* Parratt v. Taylor, 4[51 U.S. at 534-6 [distinguishing Monroe v. Pape, 365 U.S. 16[7 (1961)].

Because we conc[lude that Palmer had a limited privacy right which may ha[ve been violated, we reverse the district court's judgment as to this claim and remand for an evidentiary determination.

AFFIRMED IN PART,
REVERSED IN PART AND
REMANDED.